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**Comments on  
*Environmental Justice,  
Human Rights, and the  
Global South* by  
Professor Carmen  
Gonzalez**

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In her article *Environmental Justice, Human Rights and the Global South*, Professor Carmen Gonzalez expertly ties together very complex, and often controversial, strands of international law: the history of international law with its colonial underpinnings, the North-South divide, and environmental justice. She discusses their interaction through the lens of “environmental human rights.”

The article is divided into four parts: Part I defines “environmental justice” and Part II examines the colonial roots of environmental injustice. Part III analyzes the role of international law in justifying the conquest of nature and of non-European peoples; and Part IV identifies the limitations of the environmental human rights discourse as a means of addressing environmental injustice. The writer concludes that although “the discourse of human rights possesses tremendous emancipatory potential, . . . human rights law and institutions are embedded in power relations that replicate colonial discourses (such as the savior-savage narrative) and enable Northern states and transnational corporations to evade responsibility for their abuse of nature and of vulnerable states and peoples.”<sup>1</sup>

While the leading cause of global environmental degradation is the decadent consumption of resources by the wealthiest inhabitants, Professor Gonzalez points out that, by contrast, the adverse impacts of such degradation are borne disproportionately by the planet’s most vulnerable populations in both the North and the South.<sup>2</sup> Environmental justice struggles that take place in both groups are hindered by asymmetrical power balances in the global community that have roots in the imperial legacy of international law.<sup>3</sup>

With decolonization after the Second World War, the composition of the UN became South-heavy, which led to the adoption of several principles that had a definite Southern flavor to them: self-determination, permanent sovereignty over natural resources, the right to development, and differential treatment.<sup>4</sup> Some of these principles have now become part of hard law governing environmental issues. Yet, their adoption was fraught with controversy, as was the common heritage of mankind principle, which was promoted by Southern states to ensure that they benefit from the resources of the global commons despite the lack of sophisticated technology to exploit these resources themselves.

Professor Gonzalez also challenges “the saviors” (the Northern states and their NGOs) and “the savages” (the Southern states) narrative of human rights, which

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1. Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT’L L. 151, 194 (2015).
  2. *Id.* at 154-55.
  3. *Id.* at 158-59.
  4. *Id.* at 166-67.

she contends does not take into account Northern states' complicity in relation to conflicts in the South or the benefits that Northern states and transnational corporations derived from these conflicts.<sup>5</sup> She stresses the need for the human rights discourse to address the deeper structural inequities that produce environmental injustice. While the environmental human rights discourse holds promise for subordinated communities, the paper cautions about the drawbacks of the present human rights system: (a) false universalism that masks Northern domination; (b) failure to hold Northern states and transnational corporations responsible for human rights abuses in the South; (c) the challenge of collective human rights; (d) lack of redress for systemic harms; (e) treating symptoms rather than root causes; and (f) disregarding local conceptions of human dignity.<sup>6</sup>

The breadth and the depth of the issues covered in the article are truly astounding. It not only identifies the drawbacks of the present system, but also offers solutions to overcome them. The paper is a significant contribution to the existing literature on environmental justice, "environmental human rights," the North-South divide, and the colonial discourse. I am honored to have been afforded the opportunity to suggest a few comments on the paper, some of which can form the basis of a new research agenda.

First, the author discusses "environmental human rights" as a means of addressing environmental injustice, yet the term "environmental human rights"<sup>7</sup> does not have a universally accepted meaning under international law. The nexus between the environment and human rights has been articulated by scholars in various ways—environmental rights,<sup>8</sup> environmental procedural rights,<sup>9</sup> a

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5. *Id.* at 170, 173-75.

6. *Id.* at 173-93.

7. See Roda Mushkat, *Contextualizing Environmental Human Rights: A Relativist Perspective*, 26 PACE ENVTL. L. REV. 119 (2009) (noting that environmental human rights are inextricably linked to environmental justice and using the term "environmental human rights" in multiple ways—extending human rights principles into the environmental realm, the narrow sense (anthropocentric rights) and a more broader sense (ecological rights)).

8. See Michael Anderson, *Human Rights Approaches to Environmental Protection: An Overview*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 1 (Alan E. Boyle & Michael R. Anderson eds., 1996); Alan Boyle, *Human Rights or Environmental Rights? A Reassessment*, 18 FORDHAM ENVTL. L. REV. 471 (2007) (noting that there are three approaches to the nexus between human rights and the environment (using existing human rights to seek redress for environmental issues; using procedural rights; and recognition of a substantive right to a clean environment)). For a discussion of the emergence of a right to environment under international law, see Sumudu Atapattu, *The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment under International Law*, 16 TUL. ENVTL. L.J. 65 (2002).

9. For a discussion of these various terms, see Michael Burger, *Bi-Polar and Polycentric Approaches to Human Rights and the Environment*, 28 COLUM. J. ENVTL. L. 371 (2003) and Dinah Shelton, *Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?*, 35 DENV. J. INT'L L. & POLY 129 (2006).

substantive right to a healthy environment,<sup>10</sup> and using existing human rights to include environmental issues.<sup>11</sup> Some refer to “greening” human rights as environmental human rights,<sup>12</sup> while others refer to procedural rights as environmental human rights.<sup>13</sup> Yet others refer to a substantive right to a healthy environment as environmental human rights.<sup>14</sup> Legally, there is a considerable difference between these terms. The most commonly used rights in litigation are environmental procedural rights—access to information, participation in the decision-making process, and access to remedies.<sup>15</sup> They are part of international human rights law and crept into the environmental rights discourse through the environmental impact assessment process under national law.<sup>16</sup> They are now codified in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters<sup>17</sup>—the first time that these rights were explicitly recognized in hard law in relation to environmental issues. Although a regional treaty, it allows accession by any UN member with the consent of the Meeting of Parties.<sup>18</sup> Interestingly, the Aarhus Convention makes a clear link between procedural rights and a substantive right to a healthy environment:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.<sup>19</sup>

A related issue is the inter-generational equity principle, a cardinal principle of international environmental law. While the paper addresses intra-generational

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10. Burger, *supra* note 9.

11. See Boyle, *supra* note 8.

12. See Karrie Wolfe, *Greening the International Human Rights Sphere? Environmental Rights and the Draft Declaration of Principles on Human Rights and the Environment*, 9 APPEAL: REV. OF CURRENT L. & L. REFORM 45 (2003).

13. See Boyle, *supra* note 8.

14. It is generally accepted that contemporary international law does not recognize such a right. See Atapattu, *supra* note 8.

15. These are also referred to as access rights. See THE ACCESS INITIATIVE, <http://www.accessinitiative.org/about> (last visited Oct. 22, 2014).

16. Many national environmental laws include public participation as a component of the environmental impact assessment process. See NEIL CRAIK, *THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT: PROCESS, SUBSTANCE AND INTEGRATION* 23-53 (2008).

17. See Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 38 I.L.M. 51, available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

18. *Id.* at art. 19.

19. *Id.* at art. 1.

equity and the ecological debt that Northern states owe towards Southern states in some detail, the current generation has created an even greater ecological debt towards future generations,<sup>20</sup> essentially locking them in a cycle of environmental degradation and catastrophic weather events caused by climate change. This is closely related to the profligate consumption of resources that the paper refers to.<sup>21</sup> Northern states' path of unsustainable development has led to the current state of environmental degradation with some states even facing the prospect of extinction together with their culture, territory, and population. This is the future that awaits the Small Island States and is another example of Northern domination not just of the present generation but of many generations into the future.

Secondly, the paper highlights an important development—the adoption of rights of nature as embodied in the constitution of Ecuador.<sup>22</sup> One of the criticisms of the rights discourse, as the paper itself recognizes, is that it is inherently anthropocentric. The emerging trend toward recognizing rights of nature irrespective of its worth to human beings—a feature of international environmental law<sup>23</sup> and of ancient civilizations and indigenous cultures—is an important development. However, because these rights are new, it is not clear what their parameters are, who can bring a claim, what the remedies are, and whether the current human rights paradigm can even accommodate such rights.

Thirdly, the Guiding Principles on Business and Human Rights<sup>24</sup> (so-called Ruggie principles) would have been insightful for the section on the need to hold multinational corporations accountable for their environmental/human rights violations. These guiding principles provide a useful framework, albeit non-binding, for imposing obligations on states to ensure that transnational corporations abide by certain core environmental and human rights standards. Despite criticisms<sup>25</sup> these guiding principles may at a later date form the foundation for hard law, as many soft law instruments in the environmental field have done.

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20. Gonzalez, *supra* note 1, at 163.

21. *Id.* at 154.

22. *Id.* at 186.

23. For the ecocentric approach to environmental issues, see World Charter for Nature, G.A. Res. 37/7, U.N. Doc. A/RES/37/7 (Oct. 28, 1982), available at <http://www.un.org/documents/ga/res/37/a37r007.htm>.

24. U.N. Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 17th Sess., U.N. Doc. A/HRC/17/31 (Mar. 21, 2011), available at <http://www.businesshumanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.

25. See Penelope Simon, *International Law's Invisible Hand and the Future of Corporate Accountability for Violations of Human Rights*, 3 J. OF HUM. RTS. & ENV'T 5 (2012).

The language of rights is powerful. It focuses attention on victims. It awards remedies. Thus, it is no wonder that everybody is scrambling to use the rights framework, whether that framework is suited to his or her claim or not. While the human rights framework is ill suited for many environmental issues,<sup>26</sup> it has been a useful tool to seek redress for victims of environmental damage. Even if it obscures “the historic inequities that gave rise to anti-colonial struggles, the North-South divide, and environmental injustice within and between nations,”<sup>27</sup> it has been able to hold perpetrators accountable for their wrongdoings, to award redress to victims and to deter future damage, even if it is on a micro, individual level.<sup>28</sup> In this sense, human rights have played an important role in relation to environmental issues. The cracks in the human rights framework are visible because we have tried to apply an existing framework to a regime that was not intended for it. We have pulled and pushed at the seams of the human rights framework to accommodate environmental issues, and to some extent this has worked. Until international law recognizes a substantive human right to a healthy environment, the struggle to fit environmental issues within the existing framework of human rights will continue. As Professor Gonzalez correctly points out, without addressing the underlying historic inequities, the current inequalities that have roots in the colonial history, and the disproportionate burden that marginalized communities bear in relation to global environmental problems, the human rights paradigm will not be able to effectively address environmental injustices in the world today.

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26. The pros and cons of using the human rights framework for environmental issues have been discussed by many writers. See Gonzalez, *supra* note 1, at 172-73.

27. *Id.* at 173.

28. The main reason for the individualistic nature of the European Court of Human Rights' jurisprudence is the court's use of Article 8 of the Convention on the rights to privacy and family life as the basis for vindicating environmental rights. See DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAELKE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 1331 (4th ed. 2011).